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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
	)	
Implementation of the	)	
Telecommunications Act of 1996:	)	CC Docket No. 96-150
	)	
Accounting Safeguards Under the	)	
Telecommunications Act of 1996	)	

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COMMENTS OF BELL COMMUNICATIONS RESEARCH, INC.

TO: The Commission

Bell Communications Research, Inc. ("Bellcore") hereby files comments in response to those portions of the Notice of Proposed Rulemaking ("NPRM") in this proceeding that relate to Bellcore, primarily paragraphs 95-100 ("Manufacturing by Certifying Entities").

I. STATUTORY PLAN:

Section 273(d) of the Telecommunications Act establishes a self-contained regulatory plan addressing "Manufacturing Limitations for Standard-Setting Organizations." Section 273(d)(1) names Bellcore, but the statute also applies to other organizations.[1] Sections 273(d)(1) and (d)(3) set forth limited structural separation between the certifying and manufacturing activities that is intended to prevent potential discrimination and misuse of proprietary information by Bellcore (or

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1 Thus, when these comments address "Bellcore," they should be read as applying to Bellcore and other certifying entities.

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other certifying entity) if the certifying entity should manufacture equipment of the same class that it is certifying.[2]

In brief, the separate affiliate is to: (1) maintain books, records and accounts separate from the parent, consistently with generally acceptable accounting principles; (2) not engage in manufacturing jointly with the parent; and (3) have segregated facilities and separate employees. The parent entity may not: (1) discriminate in its treatment of the separate affiliate and others in establishment of standards, generic requirements, or product certification; (2) disclose to the affiliate information received from an unaffiliated manufacture without authorization; and (3) permit any employee engaged in product certification to engage jointly in sales or marketing.[3]

In addition, Section 273(d)(1) addresses the possibility that Bellcore may no longer be affiliated with one or more Bell Operating Companies.[4] So long as Bellcore is affiliated with more than one Bell Operating Company, Bellcore may not manufacture. However, at such time as

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2 There is ambiguity in the statute as to whether the manufacturing or certifying activity is to be in the separate affiliate. Section 273(d)(3)(A) states that the entity may manufacture a class of equipment "for which it is undertaking or has undertaken, during the previous 18 months, certification activity for such class of equipment through a separate affiliate." which could be read as contemplating that certification is to be performed in the affiliate. However, Section 273(d)(3)(C)(i) prohibits the certifying entity from discriminating in favor "of its manufacturing affiliate" and Section 273(d)(3)(C)(ii) prohibits the certifying entity from disclosing others' proprietary information "to the manufacturing affiliate." Section 273(d)(3)(B)(ii) is somewhere in the middle, stating that the separate affiliate shall not "engage in any joint manufacturing activities with" the parent. Because Bellcore is subject to a special regulatory plan under Section 273(d) that is not the same as the treatment of the Bell Operating Companies, and because there is no strong policy rationale in favor of either approach, Bellcore believes that it can choose between placing manufacturing or certification activities in the separate affiliate.

3 The attempt to briefly summarize the requirements of Section 273(d)(3)(B) should not be interpreted as a concession that the statute or the Commission's authority is any broader than is stated in Section 273; the statute speaks for itself.

4 As the Commission is aware, Bellcore's Bell Operating Company owners have announced that they are considering disposing of their interests in Bellcore.

Bellcore is not an affiliate of any Bell Operating Company, Bellcore is permitted to manufacture if it complies with Section 273(d)(3), and it "shall not be considered a Bell operating company."

II. THE NPRM UNNECESSARILY PROPOSES TO GO BEYOND THIS:

The NPRM addresses the foregoing statutory provisions. However, it goes beyond this to address a ratemaking concern. Specifically, the NPRM suggests that Section 273(g), permitting the Commission to prescribe additional rules to prevent discrimination and cross-subsidization in a Bell Operating Company's dealings with its affiliates and third parties, may have applicability to Bellcore. Compliance with Section 273(d)(3) already protects against discrimination against non-affiliated manufacturers. The NPRM proposes to apply accounting requirements in addition to those of Section 273(d)(3) to Bellcore to address cross-subsidization.

Bellcore believes that its accounting system already provides any protection of this nature that may be needed under Bellcore's current ownership. The Bellcore accounting system is separate from accounts of the Regional Companies and Bell Operating Companies that currently own it, and it provides the detail needed by its common carrier owner/affiliates and their regulators to assure that there is no improper cross-subsidization within Bellcore's activities that might cause ratepayers to sustain costs that they should not be bearing. Furthermore, Bellcore has voluntarily submitted to audit, most recently a joint NARUC/FCC audit, and has implemented additional accounting measures recommended by the auditors.

However, at such time as Bellcore is no longer affiliated with a common carrier, there would be no basis or need for imposing affiliated interest accounting, because Bellcore's relationship with the Bell Operating Companies would be truly at arms length, and its services would no longer be subject to "[being] subsidized by subscribers to regulated telecommunications services."[5] The specific accounting provisions of Section 273(d)(3) requiring maintenance of accounts for Bellcore's own separate affiliate that are "separate . . . consistent with generally accepted accounting principles" are sufficient to achieve the statutory purposes. A Bellcore that is not affiliated with a common carrier would have no ability to engage in improper cost-shifting, and Bellcore would be no different than any other supplier/vendor that engages in product certification.[6]

Thus, our specific response to paragraphs 97 and 98 of the NPRM is that there is a difference between the treatment of Bell Operating Company entry into manufacturing under Section 272 and Bellcore entry into manufacturing under Section 273. The former is intended to address ratepayer concerns that will not be present if Bellcore is no longer affiliated with a common carrier. So long as Bellcore remains affiliated with common carriers, the Commission can address cost-shifting concerns by continuing to focus its affiliated interest regulations on the Bellcore's regulated carrier affiliates, as it does presently. But, such regulations have no applicability to an independent Bellcore, could prove needlessly burdensome to it, and appear to go beyond the statutory plan.

Respectfully submitted,

BELL COMMUNICATIONS RESEARCH, INC.

By: Michael S. Slomin (am)
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Its Attorney

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5 NPRM at para. 64.

6 Indeed, the specific "arms length" requirement in the language of Section 272(b)(5) as between a Bell Operating Company and its affiliate, is absent from Section 273(d)(3), because its purpose of protecting ratepayers is not applicable to Bellcore in the absence of affiliation with a Bell Operating Company.

August 26, 1996

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